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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UTHERVERSE GAMING LLC,

Case No. 2:21-cv-00799-RSM

10 Plaintiff,

11 v.

**JOINT STATEMENT OF DISPUTED
PROPOSED VERDICT FORMS**

12 EPIC GAMES, INC.,

13 Defendant.

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16 Plaintiff Utherverse Gaming LLC (“Utherverse Gaming”) and Defendant Epic Games,
17 Inc. (“Epic Games”) propose competing verdict forms. Pursuant to Local Civil Rule 51(f), this
18 Joint Statement of Disputed Proposed Verdict Forms presents each party’s proposal followed by
19 a position statement in support.
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1 **PLAINTIFF UTHERVERSE GAMING'S PROPOSED VERDICT FORM**

2 **Instructions:** When answering the following questions and completing this Verdict Form, you
3 must follow the instructions provided and follow the Jury Instructions that you have been given.
4 Your answer to each question must be unanimous. Some of the questions contain legal terms
5 that are defined and explained in the Jury Instructions. You must refer to the Jury Instructions if
6 you are unsure about the meaning or usage of any legal term that appears in the questions below.
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8 As used herein:

9 1. “Utherverse Gaming” refers to Plaintiff Utherverse Gaming LLC.
10 2. “Epic Games” refers to Defendant Epic Games, Inc.
11 3. The “’605 Patent” refers to U.S. Patent No. 9,724,605.
12 4. The “asserted claims” refers to claims 2, 5, and 8 of the ’605 Patent.
13 5. The “accused events” refers to two virtual events created and implemented by
14 Epic Games in its multiplayer online videogame Fortnite: the Travis Scott and
15 Ariana Grande Events.

1 We, the jury, unanimously find as follows:

2
3 **QUESTION NO 1.** Has Utherverse Gaming proven by a preponderance of the evidence that
4 either or both of the accused events infringed at least one of the asserted claims?

5 Check “YES” (for Utherverse Gaming) or “NO” (for Epic Games).

6
7 **a. '605 Patent Claim 2**

8 i. Travis Scott Events

9 Yes _____ No_____

10 ii. Ariana Grande Events

11 Yes _____ No_____

13 **b. '605, Patent, Claim 5**

14 i. Travis Scott Events

15 Yes _____ No_____

16 ii. Ariana Grande Events

17 Yes _____ No_____

19 **c. '605, Patent, Claim 8**

20 i. Travis Scott Events

21 Yes _____ No_____

22 ii. Ariana Grande Events

23 Yes _____ No_____

26 *Please proceed to Question No. 2.*

1 **QUESTION NO. 2.** Has Epic Games proven by clear and convincing evidence that the
2 following claims of the '605 Patent are invalid?

3 Check "YES" (for Epic Games) or "NO" (for Utherverse Gaming)

4 **a. '605 Patent Claim 2**

5 Yes _____ No_____

6 **b. '605, Patent, Claim 5**

7 Yes _____ No_____

8 **c. '605, Patent, Claim 8**

9 Yes _____ No_____

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14 *If you answered "YES" for one or more claims in Question No. 1 for either accused event and also*
15 *answered "NO" to Question No. 2 for those same claims (in other words, you found at least one*
16 *claim infringed and not invalid), then please proceed to Question No. 3. Otherwise please skip to the*
17 *last page, sign and date the verdict form, and return it to the court clerk.*

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1 **QUESTION NO. 3.** What is the total amount of damages Utherverse Gaming has proven by a
2 preponderance of the evidence that would compensate Utherverse Gaming for Epic Games'
3 infringement of the '605 Patent?

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5 \$ _____
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8 **QUESTION NO. 4.** If you entered an amount of damages for Question No. 5, did that amount
9 reflect a calculation of percentage royalty damages, or a one-time lump sum royalty payment?

10 Percentage Royalty _____
11 One-Time Lump Sum Royalty Payment _____
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17 Please sign and date below and return this verdict form to the court clerk.

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20 **Presiding Juror:** _____

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22 **Dated:** _____
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1 **Plaintiff's Position:**

2 Defendant proposes that the jurors answer *four* separate questions regarding invalidity.
3 Defendant's proposal is prejudicial in that it places undue emphasis on invalidity. The jury
4 instructions will already direct the jury as to each of the bases for invalidity and to find the
5 claims invalid if Defendant carries its burden, and juries are presumed to follow the instructions.
6 *GPNE Corp. v. Apple Inc.*, 108 F. Supp. 3d 839, 859 (N.D. Cal. 2015). Repeating the bases for
7 invalidity with separate questions is unnecessarily duplicative when the Federal Circuit has held
8 generic verdict are sufficient. *See, e.g., Structural Rubber Prods. v. Park Rubber Co.*, 749 F.2d
9 707, 720 (Fed. Cir. 1984) ("a trial court may, with proper instructions, present a patent case to
10 the jury for a general verdict encompassing all of the issues of validity and infringement, or may
11 ask for a general answer on one or more specific legal issues.") (internal citations omitted). "The
12 specificity of the verdict is within the discretion of the trial judge," *Hoechst Celanese Corp. v.*
13 *BP Chemicals Ltd.*, 78 F.3d 1575, 1581 (Fed. Cir. 1996), and in this case the Court should use
14 general questions.

15 Further, Defendant cites the sample verdict form of the N.D. Cal. model patent
16 instructions in support of its multiple invalidity questions. However, the model sample verdict
17 form's questions on anticipation (Defendant's Question 2), obviousness (Defendant's Question
18 3), and enablement (Defendant's Question 4) provide much more context and guidance than do
19 Defendant's proposals, and Defendant's Question 5 is not present in the model sample verdict
20 form at all. *See* N.D. Cal. Model Patent Jury Instruction No. C.3. If the Court elects to follow
21 the sample verdict form from the model, it should use the more fulsome explanations, rather than
22 Defendant's truncated versions.

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DEFENDANT EPIC GAMES' PROPOSED VERDICT FORM

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2 **Instructions:** When answering the following questions and completing this Verdict Form,
3 please follow the instructions provided and follow the Jury Instructions that you have been
4 given. Your answer to each question must be unanimous. Some of the questions contain legal
5 terms that are defined and explained in the Jury Instructions. Please refer to the Jury Instructions
6 if you are unsure about the meaning or usage of any legal term that appears in the questions
7 below.
8

9 As used herein:

10 “Utherverse” refers to Plaintiff Utherverse Gaming LLC.

11 “Epic” refers to Defendant Epic Games, Inc.

12 The “’605 patent” refers to U.S. Patent No. 9,724,605.

13 The “asserted claims” refers to claims 2, 5, and 8 of the ’605 patent.

14 The “accused events” refers to two events hosted by Epic in its multiplayer online
15 videogame *Fortnite*: the Travis Scott and Ariana Grande concerts.
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1 We, the jury, unanimously find as follows:

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3 **QUESTION NO 1.** Has Utherverse proven by a preponderance of the evidence that either of
4 the accused events infringed any of the asserted claims?

5 Check “YES” (for Utherverse) or “NO” (for Epic)

PATENT/CLAIM	INFRINGED – TRAVIS SCOTT?	INFRINGED – ARIANA GRANDE?
’605 patent, claim 2	YES _____ NO _____	YES _____ NO _____
’605 patent, claim 5	YES _____ NO _____	YES _____ NO _____
’605 patent, claim 8	YES _____ NO _____	YES _____ NO _____

12 *Please proceed to Question No. 2.*

1 **QUESTION NO. 2.** Has Epic proven by clear and convincing evidence that any of the asserted
 2 claims is anticipated by the prior art?

3 Check “YES” (for Epic) or “NO” (for Utherverse)

PATENT/CLAIM	INVALID AS ANTICIPATED BY THE PRIOR ART?
'605 patent, claim 2	YES _____ NO _____
'605 patent, claim 5	YES _____ NO _____
'605 patent, claim 8	YES _____ NO _____

11 *Please proceed to Question 3.*

12 **QUESTION NO. 3.** Has Epic proven that by clear and convincing evidence that any of the
 13 asserted claims is invalid as obvious based on the prior art?

14 Check “YES” (for Epic) or “NO” (for Utherverse)

PATENT/CLAIM	INVALID AS OBVIOUS BASED ON THE PRIOR ART?
'605 patent, claim 2	YES _____ NO _____
'605 patent, claim 5	YES _____ NO _____
'605 patent, claim 8	YES _____ NO _____

25 *Please proceed to Question 4.*

1 **QUESTION NO. 4.** Has Epic proven by clear and convincing evidence that any of the asserted
 2 claims are invalid for lack of enablement?

3 Check “YES” (for Epic) or “NO” (for Utherverse)

PATENT/CLAIM	INVALID FOR LACK OF ENABLEMENT?
'605 patent, claim 2	YES _____ NO _____
'605 patent, claim 5	YES _____ NO _____
'605 patent, claim 8	YES _____ NO _____

10 *Please proceed to Question 5.*

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 12 **QUESTION NO. 5.** Has Epic proven by clear and convincing evidence that the elements of any
 13 of the asserted claims, taken individually or together, involved only technology that a person of
 14 ordinary skill in the art would consider to be well-understood, routine, and conventional as of
 15 August 12, 2014?

PATENT/CLAIM	INVALID AS WELL-UNDERSTOOD, ROUTINE, AND CONVENTIONAL?
'605 patent, claim 2	YES _____ NO _____
'605 patent, claim 5	YES _____ NO _____
'605 patent, claim 8	YES _____ NO _____

23
 24 *If you answered “YES” for one or more claims in Question No. 1 for either accused event and also
 25 answered “NO” to Questions Nos. 2-5 for those same claims (in other words, you found at least one
 26 claim infringed and not invalid), then please proceed to Question No. 6. Otherwise, please skip to
 27 the last page, sign and date the verdict form, and return it to the court clerk.*

1 **QUESTION NO. 6.** What is the total amount of damages Utherverse has proven by a
2 preponderance of the evidence that it is entitled to as a reasonable royalty for Epic's
3 infringement?

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5 Total Amount for Infringement: \$_____

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7 **QUESTION NO. 7.** If you entered an amount of damages for Question No. 5, did that amount
8 reflect a calculation of percentage royalty damages, or a one-time lump sum royalty payment:

TYPE OF DAMAGES	SELECT ONE
Percentage Royalty	<input type="checkbox"/>
One Time, Lump Sum Royalty Payment	<input type="checkbox"/>

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17 *Please proceed to the last page, sign and date the verdict form, and return it to the court clerk.*

UNANIMOUS VERDICT

UPON REACHING A UNANIMOUS VERDICT ON EACH QUESTION ABOVE,
EACH JUROR MUST SIGN BELOW.

We, the jury, unanimously agree to the answers to the above questions and return them under the instructions of this Court as our verdict in this case.

1 **Defendant's Position:**

2 *Validity (Question Nos. 2-5):* Epic's proposal is consistent with the sample verdict form
3 in the model jury instructions, which explicitly separates questions for each distinct invalidity
4 theory. *See* N.D. Cal. Model Patent Jury Instruction No. C.3. This structure promotes clarity
5 and ensures that a jury's findings are easily reviewable on appeal. *Cordance Corp. v.*
6 *Amazon.com, Inc.*, 658 F.3d 1330, 1337 (Fed. Cir. 2011) ("due to the presentation of multiple
7 invalidity theories and the jury's general verdict, it remains unclear upon which ground(s) the
8 jury based its findings of invalidity"). Even where only one invalidity theory is at issue, such
9 theory should be identified within the verdict form's question. For example, if the issue is
10 obviousness, the verdict form should ask whether any of the asserted claims are "invalid as
11 obvious based on the prior art." This approach, consistent with the sample verdict form,
12 promotes clarity for the jury and preserves a clean record for appeal. The Court should therefore
13 adopt Epic's proposal.

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1 DATED this 11th day of May, 2025

2 Respectfully submitted,

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